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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
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15 DAN H. COOPER, ) Case No. CV 11-1663-R (SH)  
16 Petitioner, )  
17 v. ) MEMORANDUM AND ORDER  
18 ) DISMISSING PETITION FOR WRIT  
19 JOHN MARSHALL, Warden, ) OF HABEAS CORPUS  
20 Respondent. )

21 **I. BACKGROUND**

22 On February 24, 2011, pro se petitioner, in state custody, filed a Petition for  
23 Writ of Habeas Corpus by a Person in State Custody (“Petition”). In his Petition,  
24 petitioner challenges his 1998 convictions for robbery and kidnapping to commit  
25 another crime, Los Angeles County Superior Court (Case No. YA036078).  
26 (Petition at 3). As best the Court can glean from petitioner’s allegations, the  
27 Petition alleges the following claims: (1) Petitioner received ineffective assistance  
28 of trial counsel and appellate counsel with respect to the absence of Miranda rights

1 prior to his interrogation; (2) Petitioner was deprived of his Miranda rights, in  
2 violation of his right to due process; (3) Petitioner's convictions were based on false  
3 arrest reports and perjured testimony; and (4) The prosecution knowingly used false  
4 testimony to obtain petitioner's convictions. (Petition Memorandum at 4-21).

## 5 6 **II. DISCUSSION**

7 On December 28, 2000, petitioner filed a Petition for Writ of Habeas Corpus  
8 by a Person in State Custody herein (Case Number CV 00-13543-R(SH))). In that  
9 habeas petition, petitioner challenged the same 1998 convictions. On July 24, 2001,  
10 the district court denied that habeas petition with prejudice, in accordance with the  
11 findings, conclusions and recommendations of the Magistrate Judge. On August 6,  
12 2001, the district court denied petitioner's request for a certificate of appealability.  
13 On December 4, 2002, the Ninth Circuit Court of Appeals denied petitioner's  
14 request for a certificate of appealability.

15 On July 19, 2007, petitioner filed what the Court construed as another  
16 Petition for Writ of Habeas Corpus by a Person in State Custody herein (Case  
17 Number CV 07-04683-R (SH)). In that habeas petition, petitioner challenged the  
18 same 1998 convictions. On July 24, 2007, the district court dismissed that habeas  
19 petition as an unauthorized, successive petition. On August 20, 2007, the district  
20 denied petitioner's request for a certificate of appealability. On June 24, 2008, the  
21 Ninth Circuit Court of Appeals denied petitioner's request for a certificate of  
22 appealability.

23 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),  
24 enacted on April 24, 1996, provides in pertinent part that:

25 (a) No circuit or district judge shall be required to entertain an  
26 application for a writ of habeas corpus to inquire into the detention of a  
27 person pursuant to a judgment of a court of the United States if it appears that  
28 the legality of such detention has been determined by a judge or court of the

1 United States on a prior application for a writ of habeas corpus, except as  
2 provided in §2255.

3 (b)(1) A claim presented in a second or successive habeas corpus  
4 application under section 2254 that was presented in a prior application shall  
5 be dismissed.

6 (2) A claim presented in a second or successive habeas corpus  
7 application under section 2254 that was not presented in a prior application  
8 shall be dismissed unless--

9 (A) the applicant shows that the claim relies on a new rule of  
10 constitutional law, made retroactive to cases on collateral review by the  
11 Supreme Court, that was previously unavailable; or

12 (B)(i) the factual predicate for the claim could not have been  
13 discovered previously through the exercise of due diligence; and

14 (ii) the facts underlying the claim, if proven and viewed in light of the  
15 evidence as a whole, would be sufficient to establish by clear and convincing  
16 evidence that, but for constitutional error, no reasonable fact finder would  
17 have found the applicant guilty of the underlying offense.

18 (3)(A) Before a second or successive application permitted by this  
19 section is filed in the district court, the applicant shall move in the appropriate  
20 court of appeals for an order authorizing the district court to consider the  
21 application.

22 (B) A motion in the court of appeals for an order authorizing the  
23 district court to consider a second or successive application shall be  
24 determined by a three-judge panel of the court of appeals.

25 (C) The court of appeals may authorize the filing of a second or  
26 successive application only if it determines that the application makes a  
27 prima facie showing that the application satisfies the requirements of this  
28 subsection.

1 (D) The court of appeals shall grant or deny the authorization to file a  
2 second or successive application not later than 30 days after the filing of the  
3 motion.

4 (E) The grant or denial of an authorization by a court of appeals to file  
5 a second or successive application shall not be appealable and shall not be the  
6 subject of a Petition for Rehearing or for a Writ of Certiorari.

7 (4) A district court shall dismiss any claim presented in a second or  
8 successive application that the court of appeals has authorized to be filed  
9 unless the applicant shows that the claim satisfies the requirements of this  
10 section. 28 U.S.C. § 2244.

11 28 U.S.C. § 2244(b)(3) “creates a ‘gatekeeping’ mechanism for the  
12 consideration of second or successive applications in district court. The prospective  
13 applicant must file in the court of appeals a motion for leave to file a second or  
14 successive habeas application in the district court. § 2244(b)(3)(A).” Felker v.  
15 Turpin, 518 U.S. 651, 657, 116 S.Ct. 2333, 135 L.Ed 2d 827 (1996).

16 The instant Petition is a successive habeas corpus petition. The instant  
17 Petition was filed on February 24, 2011, well after the effective date of the AEDPA.  
18 Therefore, petitioner was required to obtain authorization from the Court of Appeals  
19 before filing the present Petition. See 28 U.S.C. §2244(b)(3)(A). It appears that no  
20 such authorization has been obtained in this case. Thus, the Petition should be  
21 dismissed for that reason.

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**III. ORDER**

ACCORDINGLY, IT IS ORDERED that the Petition be dismissed.

DATED: March 8, 2011



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MANUEL REAL  
UNITED STATES DISTRICT JUDGE

Presented by:

Dated: February 28, 2011



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STEPHEN J. HILLMAN  
UNITED STATES MAGISTRATE JUDGE